IN THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

WATERLOO COMMUNITY SCHOOL DISTRICT, Plaintiff, vs. PUBLIC EMPLOYMENT RELATIONS BOARD, WATERLOO EDUCATION ASSOCIATION, and WATERLOO EDUCATIONAL SUPPORT PERSONNEL, Defendants.	]]]]]]]]]]	No. LACV083846 DECISION ON JUDICIAL REVIEW

Hearing was held on the petition for judicial review. The plaintiff Waterloo Community School District (district) appeared by attorney Brian Gruhn. The defendant Public Employment Relations Board (board) appeared by attorney Jan Berry. The Waterloo Education Association (association) and Waterloo Educational Support Personnel (support personnel) appeared by attorney Gerald Hammond.

PROCEDURAL HISTORY

On April 8, 1999, the district filed with the board a petition to resolve negotiability disputes. On May 4 the district filed a second petition to resolve additional negotiability disputes. The parties briefed the issues. On June 2, 1999, the board filed a preliminary ruling on negotiability, finding that the dispurted proposals were variously either permissive or mandatory subjects of bargaining. On June 17 the district filed a request for final ruling. The district clarified this request in an additional pleading filed on August 16, 1999. On September 2, support personnel and the association filed a motion asking the board for final rulings on two additional issues. On February 2, 2000, the board issued a final ruling on negotiability of all the disputed issues.

Of the proposed subjects of bargaining submitted for resolution, the board made final findings that the disputed proposals were either mandatory or permissive subjects of bargaining as set out in detail in the discussion below. The plaintiff district filed a petition for judicial review on February 29, 2000. The defendants association and support personnel answered on March 16, 2000. The defendant board replied on March 21, 2000. The parties submitted briefs, and oral argument was held on September 25, 2000.

APPLICABLE LAW

The procedure for judicial review of a final agency action is set out in the Iowa Administrative Procedure Act, chapter 17A of the Iowa code. The district court, acting as an appellate court, may affirm the agency action or reverse, modify, or grant other

appropriate relief from the agency action if it determines that substantial rights of the party seeking relief have been prejudiced and that the agency action is unconstitutional, beyond the authority delegated to the agency by law, based upon an erroneous interpretation of a provision of law whose interpretation has not "clearly been vested by law in the discretion of the agency," based upon an illegal procedure or decision-making process, or made by persons who were improperly constituted as a decision-making body. *Code of Iowa* section 17A.19(1)(a-e).

The court may also reverse, modify or grant other appropriate relief from an agency decision which is based upon a finding of fact on a subject which is within the discretion of the agency but is not supported by substantial evidence in the record. *Code of Iowa* section 17A.19(10)(f). In reviewing administrative agency actions challenged on this basis, the court is bound by the agency's findings of fact if those findings are supported by substantial evidence in the record viewed as a whole. By its terms, subsection (f) applies only to determinations of fact made by the agency. The disputed issues in this appeal, however, are entirely legal and do not turn on any disputed questions of fact.

In reviewing legal issues, the court is not bound by the agency's legal conclusions. Rather, a district court conducting judicial review of a final agency action acts in an appellate capacity to correct errors of law. The court may correct misinterpretations and misapplications of the law. *Garwick v. Iowa DOT*, 611 N.W.2d 286, 289 (Iowa 2000). In determining whether the law has been correctly applied, the court gives weight to the agency's construction of the statute. *Berger v. Iowa Fin. Authority*, 593 N.W.2d 136, 138 (Iowa 1999). An agency's interpretation of applicable law is given greater consideration in areas of the agency's expertise. If a case involves interpretation of statutes which affect the agency's work, the court defers to the agency's expertise unless the interpretation adopted by the agency is clearly erroneous. *Madrid Home for the Aging v. Iowa Dep't. of Human Services*, 557 N.W.2d 507, 510-11 (Iowa 1996). See also *Wiebenga v. Iowa Dep't. of Transp. Motor Vehicle Div.*, 530 N.W.2d 732, 734 (Iowa 1995).

Labor relations between government and its employees are governed by chapter 20 of the Iowa code, which establishes a public employment relations board and makes detailed provisions for collective bargaining.

Code of Iowa section 20.7 defines the rights of public employers. In addition to all the powers, duties and rights established by constitution, statute, ordinance, charter or special act, this section gives a public employer the exclusive power, duty and right to direct the work of its employees; to hire, promote, demote, transfer, assign and retain public employees in positions within the public agency; to suspend or discharge public employees for proper cause; to maintain the efficiency of governmental operations; to relieve public employees from duties because of lack of work or for other legitimate

reasons; to determine and implement methods, means, assignments, and personnel by which the public employer's operations are to be conducted; to take such actions as may be necessary to carry out the mission of the public employer; to initiate, prepare, certify and administer its budget; and to exercise all powers and duties granted to the public employer by law.

Section 20.9 defines the scope of negotiations. The entire dispute among these parties is whether identified subject of collective bargaining are mandatory or permissive within the meaning of section 20.9 or illegal by operation of various other provisions of law.

The first tribunal in which negotiability disputes arising under section 20.9 can be adjudicated is the board. PERB subrule 621--6.3(2). Hence, section 20.9 affects the work of the board. This court is therefore required to affirm the board's interpretations of section 20.9 unless they are clearly erroneous. See *MadridHome* and *Wiebenga*, both cited above.

Section 20.9 requires public employers and their employee organizations to negotiate in good faith with respect to "wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety measures, evaluation procedures, procedures for staff reduction, in-service training, and other matters mutually agreed upon." The section further provides that negotiation "shall also include" terms authorizing dues check offs and grievance procedures for resolving any questions arising under the contract. Retirement systems are expressly excluded from the scope of negotiations.

The list of specific subjects of negotiation in section 20.9 established the entire array of "mandatory" subjects of bargaining -- that is, subjects about which either party is required to bargain upon the request of the other party. In the larger scheme of chapter 20, only mandatory subjects of bargaining trigger the dispute resolution procedures set out in chapter 20 if the parties cannot agree upon them.

Subjects identified in section 20.9 as "other matters mutually agreed upon" are permissive subjects of bargaining. The parties may bargain on these subjects by agreement, but neither side can force the other to negotiate on them and neither side can invoke the dispute resolution procedures of chapter 20 if they do not agree.

Finally, prohibited or illegal subjects are those upon which bargaining between public employers and their employees is precluded by some applicable law. See, *e.g.*, *Charles City Comm. Sch. Dist. v. Public Employment Relations Bd.*, 275 N.W.2d 766, 769 (Iowa 1979).

Our Supreme Court has long held that the list of specific subjects of bargaining in section 20.9 establishes the complete inventory of mandatory subjects and that, in creating this list, the legislature meant for Iowa courts to adopt a restrictive approach when interpreting those subjects. *Charles City,* 275 N.W.2d at 772-73. In part, our Court believed the legislature took this restrictive approace because the list of exclusive rights of employers in section 20.7 gives public employers greater authority over public employees than is possessed by their private-sector counterparts whose authority is governed by the National Labor Relations Act. *Iowa City Ass'n. of Fire Fighters v. Pubic Employment Relations Bd.*, 554 N.W.2d 707, 710 (Iowa 1996).

If a disputed subject of bargaining "escapes easy definition," then the court must balance the interests of the employer under section 20.7 against the interests of the employee under section 20.9. Such balancing is seldom necessary, and should occur only if the proposed mandatory subject is difficult to define. *Decatur County v. Public Employment Relations Bd.*, 564 N.W.2d 394, 396-97 (Iowa 1997).

To determine whether a particular proposal is a mandatory subject of bargaining, the court applies a two-step analysis. First, the court examines only the subject matter, not the merits of the proposal; second, the court construes the mandatory subjects listed in section 20.9 narrowly and restrictively. Specifically, the court determines whether the proposal on its face fits within a definitionally fixed bargaining subject listed in section 20.9. To determine the scope of the topic the court looks to what the proposal, if incorporated into a collective bargaining contract, would require an employer to do. 3) The court reads the terms of the proposal literally. As noted above, the court resorts to balancing interests only if the proposed subject cannot be literally and easily defined. *Id.*

When construing statutes, the court should give effect to the intention of the legislature. The court determines the legislative intent by looking to the language of the statute. *State v. White*, 563 N.W.2d. 615, 617 (Iowa 1997). The court considers the ordinary meanings of the words employed and the context in which they appear. *Lockhart v. Cedar Rapids Comm. Sch. Dist.*, 577 N.W.2d. 845, 847 (Iowa 1998). Words in a statute should be given their ordinary meaning if there is no legislative definition or no meaning of art within the law. When the words of a statute are plain and its meaning is clear, the court may not search beyond the statute's express terms to divine the intention of the legislature. *Martin v. Waterloo Comm. Sch. Dist.*, 518 N.W.2d 381, 383 (Iowa 1994). Courts should construe statutes that relate to the same subject or closely related subjects together so as to produce a result which is harmonious and consistent with the intention of the legislature. *State v. McSorley*, 549 N.W.2d. 807, 809 (Iowa 1996). The court should not construe a statute in a manner which would produce impractical or absurd results. *Carolan v. Hill*, 553 N.W.2d. 882, 887 (Iowa 1996).

DISCUSSION OF LEGAL ISSUES SUBMITTED ON APPEAL

The court will address together those proposals made by different bargaining units with respect to the same proposed subject of bargaining.

Support Personnel Proposal 6

The board found that the following disputed contract item under support personnel's proposed article VII, "Wages and Salaries," is mandatory:

> E. Extra Time and . . .
>
> 1. Extra time is time beyond the regular schedule, or beyond the contract day or contract week but less than eight (8) hours a day or forty (40) hours a week. Payment for extra time will be at the employee's regular hourly rate, unless the employee agrees to take compensatory time. Such time will be submitted by the supervisor for the next regular payroll.
>
> 3. Time that employees are authorized to spend in addition to their regular hours to attend staff building or team meetings shall be extra time.

The district argues that this proposal does not address overtime compensation, a mandatory subject of bargaining, and does not address wages, another mandatory subject of bargaining, because it does not define "a specific sum or price paid by an employer in return for services rendered by an employee." See *Ft. Dodge*, 319 N.W.2d at 183.

Proposal 6 does indeed address wages. It establishes a "specific sum or price" -- an employee's regular hourly rate -- for defined services rendered by the employee to the district. The defined service is attending outside the employee's regular working hours meetings which the employee is authorized to attend.

Because this is a group contract, fixing the specific rate as equal to the regular hourly rate of each employee is the only feasible way to identify a specific sum. The contract could not practicably list the extra-time rate individually for each employee. Even if it did so, such a provision would fail on the earliest date in the year when an employee's hourly rate changed.

Additionally, the provisions in question defines not only wages in general, but also "supplemental pay," another mandatory subject of bargaining listed in section 20.9. "Supplemental pay" means pay for rendering a service. It is based upon "extra services" and relates directly to the time, skill and nature of those additional services. *Fort Dodge*,

319 N.W. 2d at 184. By definition, performing services by attending meetings during times "in addition to" employees' regular work hours is performing "extra" services. Support personnel proposal 6 identifies a mandatory subject of bargaining. The decision of the board is therefore **AFFIRMED**.

Support Personnel Proposal 8

The board found that several disputed items under article IX, "Insurance," are variously permissive and mandatory.

Section D(1) provides for extended coverage after an employee has exhausted the employee's accrued sick leave entitlement.

Section D(2) provides that designated employees may continue to participate in district-provided insurance programs by assuming policy payments. Subsections (a) and (b) extend this benefit to certain employees who are on leaves of absence. Subsection (c) extends the benefit to employees who retire after ten years of service. Subjection (d) defines how long continuation of insurance is available.

Section D(3) provides for continuing employer-paid insurance coverage through the month August for employees laid off at the end of the school year.

Tthe board determined that all of the provisions set out above are mandatory except item D(2)(c), which affects employees retiring after ten years of service.

With regard to section D(2)(c), the district asserts, and support personnel do not dispute, that provision of insurance benefits upon retirement relates primarily to retirement systems and is therefore not a mandatory subject of bargaining.

The district cites *City of Mason City v. Public Employment Relations Bd.*, 316 N.W.2d 851, 855 (Iowa 1982), for the proposition that providing insurance benefits to retired employees is a permissive subject of bargaining. In fact, however, that case says that providing insurance benefits to retired employees, is a prohibited subject of bargaining under section 20.9. In any event, no party now argues that providing such benefits to retired employees in section D(2)(c) is a mandatory subject of bargaining. The board's decision finding it a non-mandatory subject is therefore **AFFIRMED**.

With respect to the remaining provisions of section D, the fighting issue is whether laid-off employees are still employees. If they are, then these provisions for insurance are mandatory subjects of bargaining. If they are not, then these provisions are not mandatory. Support personnel cite *Decatur County* for the proposition that employees on leave are entitled to mandatory bargaining concerning what benefits are available to them while they are on leave. 564 N.W.2d 394 at 395, 397. The district argues that to be

considered employees persons in layoff status must have a reasonable expectancy of their eventual return and that nothing in the disputed contract language limits the benefit to those persons on leave or layoff who have a reasonable expectation that they will be recalled to regular employment.

Random House Webster's College Dictionary (1992) defines "layoff" as "the act of dismissing employees, esp. temporarily." The same source defines "leave" as "permission to be absent, as from work or military duty," and also "the time this permission lasts." These definitions are consistent with the ordinary usage and meanings of the words. Persons "on leave" or "laid off" are understood to be employees temporarily permitted (on leave) or required (laid off) to be absent from work. On the other hand, people who are separated from their work with no reasonable hope or expectation of recall are said to be "terminated" or "fired."

The district's interpretation of "leave" and "layoff" runs contrary to both formal definition and common experience.

The decision of the board with respect to support personnel's proposition 8 is therefore **AFFIRMED**.

Support Personnel Proposal 10; Association Proposal 12

Support personnel's proposed article XIV, "Work Day," section A, "Work Week," provides that "the normal work week shall be five (5) consecutive workdays, Monday through Friday." The association's proposed article XIV, "Employee Hours," section A, "Work Week," make the same provision.

Code of Iowa Section 20.9 includes "hours" as a mandatory subject of bargaining. The district contends that *Iowa City Fire Fighters* defines hours in the context of section 20.9 as "the total hours to be included in a work day, the starting and quitting times, and break times." However, in rejecting this argument, the board noted that in *Iowa City* the Court stated only that the mandatory subject "hours" **includes** "the total hours to be included in a work day, the starting and quitting times, and break times," and noted further that those items were not in dispute in the *Iowa City* case. 554 N.W.2d at 707.

The district's contention that "hours" does not include a definition of the normal work week is unpersuasive. The "work week" proposal establishes that employees will be required to do "normal work" only during week days and not on weekends. In part, this provision defines the hours during which employees can be required to do normal work" and the hours during which they cannot. The concepts of work week, work day, and work hours are logically so interrelated as to be inseparable.

The ruling of the board with respect to these proposals is **AFFIRMED**.

Support Personnel Proposal 13; Association Proposal 15

Support personnal article XVIII and association article XVII contain detailed policy proposals concerning safety. The disputed provisions appear in section A, which addresses protection of employees and students. The district appeals from the board's finding that sections A(4) (bomb threats), A(6) (first aid) and A(8) (blood borne pathogens) are mandatory with respect to employees.

"Health and safety matters" are mandatory section 20.9 subjects. The parties agree that in order for a health and safety proposal to be a mandatory subject of bargaining, the proposal must bear a direct relationship to the health and safety of the employees.

Section A(4) requires the district to have established procedures in each building for dealing with bomb threats and to make those procedures known to each employee before the first class day. The section also forbids the district to require any employee to search for a bomb.

Section A(6) requires that each building have properly trained personnel on call to give first aid treatment. It also requires the district to inform every employee who the designated first aid treatment providers are and the procedure to follow in calling for first aid assistance.

Section A(8) requires in detail that the district maintain a plan for controlling exposure to blood-borne pathogens, including follow-up evaluation and counseling for any employee who is exposed in the course of employment. This section also requires the district to provide exposure protection materials.

Clearly, all of the provisions summarized above relate directly to the health and safety of employees. The court is unable to conceive of any circumstances in which knowing how to respond if there is a bomb threat, knowing how to obtain first aid treatment if the employee suffers a physical injury or illness that requires prompt first-responder attention, or knowing what to to to avoid exposure to bloodborne pathogens and what to do if exposed would not be related directly to the health and safety of employees.

The last two sentences of section 8 authorize the district to take disciplinary action against employees who do not cooperate with the plan. Those provisions do not relate directly to employee health and safety.

The board's ruling that as they apply to employees all provisions of article XIII, section A(4), (6) and (8) except for the last two sentences of section (8) identify mandatory subjects of bargaining is therefore **AFFIRMED**.

Support Personnel Proposal 2

This proposal is also found in support personnel article XVIII, "Safety." The board ruled that all of the subjects identified in support personnel section A(1) are permissive subjects of bargaining. Neither side has appealed that ruling. The ruling of the board is therefore **AFFIRMED**.

Support Personnel Proposals 3 and 17; Association Proposal 16

"Evaluation procedures" are a mandatory subject of bargaining under section 20.9.

Evaluation Criteria and Procedures

Support personnel article XXIII, "Evaluation," establishes in section A criteria for "performance evaluation" of an employee and requires that all evaluations should be "fair and accurate." Section B provides that evaluation criteria must be given to the employee in writing and requires the district to state a summary conclusion that the employee is or is not performing satisfactorily.

The board cited several cases beginning with *Aplington Comm. Sch. Dist. v. Public Employment Relations Bd.*, 392 N.W.2d 495, 500 (Iowa 1986), for the proposition that substantive criteria for evaluation are encompassed within the term "evaluation procedures" and are thus mandatory subjects of bargaining. Although our Supreme Court has narrowed its previously broad definition of the term "procedure," it has nonetheless continued to interpret "evaluation procedures" as including substantive criteria for evaluation. See *State v. Public Employment Relations Bd.*, 508 N.W.2d 668, 677 (Iowa 1993) (when used to identify evaluation procedures in the context of public employment relations law, the term procedure "contemplates substantive criteria"). See also to the same effect *Aplington*, 392 N.W.2d at 499-500; *Northeast Comm. Sch. Dist. v. Public Employment Relations Bd.*, 408 N.W.2d 46, 49 (Iowa 1987).

The board found that because "performance evaluation" criteria are established in Proposals 17 and 16, those proposals identify mandatory subjects of bargaining.

The district argues that because of a recent change in Iowa law, "performance evaluation" can no longer be a mandatory subject of bargaining. The district concludes that is is therefore a permissive subject of bargaining.

Code of Iowa chapter 279 establishes the powers and duties of school boards. Section 279.14 imposes upon school boards the duty to "establish evaluation criteria and . . . implement evaluation procedures." It requires the board the negotiate in good faith with an employee bargaining representative pursuant to chapter 20.

In 1998 the Iowa legislature enacted subsection (2) of section 279.14. The new subsection reserves the right to determine "standards of performance" for school district employees exclusively to the school board and expressly exempts such determination from mandatory negotiations under chapter 20. It further provides that if a teacher is terminated, the teacher's objections to the procedures, use or content of an evaluation will be determined in a termination proceeding pursuant to chapter 279, not in a grievance procedure pursuant to chapter 20. Finally, the subsection provides that a school district is not obligated to process any evaluation grievance after it has served notice and a recommendation to terminate an individual's teaching contract.

As the district sees it, the language of section 279.14(2) demonstrates clearly that the legislature intended to exclude evaluation criteria and from the list of mandatory bargaining subjects. By necessary implication, the argument is that the relevant holdings in *Aplington* and its progeny have been rendered no longer applicable by the change in the statute.

Support personnel and the association point out that the board has decided this issue adversely to the district in *Iowa State Education Ass'n. and Iowa Ass'n. of School Boards*, 99 PERB 6002. That decision was appealed to the district court in Polk County, and the court affirmed the board's ruling. See Polk County case number AA 3417 decided July 11, 2000.

This court has carefully reviewed the Polk County decision and given it respectful consideration. Nonetheless, this court has reached a contrary conclusion.

The undisputed holding of *Aplington*, reaffirmed in *Northeast* and in *State v. Public Employment Relations Bd.*, 508 N.W.2d 668 (Iowa 1993), is that the term "evaluation procedures" in section 20.9 contemplates "substantive criteria" as well as procedural mechanics. *Aplington*, 392 N.W.2d at 499-500; *Northeast*, 408 N.W.2d at 49; *State v. Public Employment Relations Bd.*, 508 N.W.2d at 677.

It is true that the terms which identify substantive evaluation criteria are different in the two statutes. Section 279.14(2) reserves to school districts the right to determine "standards of performance," whereas section 20.9 lists as a mandatory subject of bargaining "evaluation procedures." This difference in words, however, does not end the inquiry or resolve the dispute.

The proposed bargaining items relate almost entirely to specific substantive criteria -- in other words, "performance standards" -- not to procedural arrangements for evaluation.

Section A requires that the employee be evaluated "solely" on work performance; that this evaluation be made by comparing the employee's performance with a written job

description; and, perhaps fatally, that the evaluation must be accomplished using a "mutually agreed upon" evaluation instrument. Job evaluation instruments apply standardized criteria to assess employee performance. Giving an employee veto power over the choice of evaluation instrument gives the employee the right to participate in decisions about what performance standards will be used to evaluate the employee's work. Telling the district that it may not consider anything except the employee's "work performance" -- that it may not, for example, consider the employee's other services to the community or the employee's contribution of voluntary, non-contractual services to the district or its students -- conflicts squarely with the legislative command that the district, through its board of directors, shall have sole authority to determine standards of performance expected of school district personnel.

Similarly, section B requires as part of the evaluation procedure that each employee be given a single, summary evaluation of either "satisfactory performance" or "unsatisfactory performance." Again, this requirement violates the legislative command that "standards of performance" shall be set entirely by the district. "Satisfactory performance" and "unsatisfactory performance" are unarguably "standards of performance." Section 279.14(2) says in plain words that the determination of "standards of performance" is reserved exclusively to the district.

Another provision of section 279.14(2) also shows that the disputed evaluation criteria are not mandatory subjects of bargaining.

A grievance based on evaluation must be grieved under chapter 279, not under chapter 20. If the legislature had intended that such disputed should continue to be mandatory subjects of bargaining, it would not have left public employees without the only rememdy our law provides to resolve disputes about mandatory subjects of bargaining.

Not all possible proposals for evaluation are excluded from chapter 20 processes by section 279.14(2). Public employers and their employees could fashion proposals for "evaluation procedures" which did not impinge upon the school board's sole right to determine substantive evaluation criteria -- proposals, for example, about when evaluations were to be conducted and by whom. A proposal for such procedures would not violate section 279.14(2) and, because it would establish "evaluation procedures," it would be a mandatory subject of bargaining. However, support personnel's proposed sections A and B of article XXIII consist almost entirely of substantive evaluation criteria -- "standards of performance" -- and are thus specifically exempted by the new statute from the operation of section 20.9. Because of the specific prohibition of section 279.14(2), these proposals cannot be mandatory subjects of bargaining. The decision of the board to the contrary is therefore **REVERSED.**

Section C(6) of the association's proposed article XVIII also deals with evaluation and is substantially similar to support personnel's proposed . It provides that every completed evaluation report shall include an overall assessment of "satisfactory performance" or "unsatisfactory performance." It also provides that an employee who submits a written response to an evaluation preserves the right to object to the evaluation "in any disciplinary proceeding" initiated by the district which is based in any part on the evaluation.

As set out more fully in the discussion of support personnel proposal 17 above, the requirement for an overall rating of "satisfactory performance" or "unsatisfactory performance" violates section 272.14(2). The board's ruling that the first sentence of section C(6) establishes a mandatory subject of bargaining is therefore **REVERSED**.

The preservation of the employee's right to object to the evaluation in any disciplinary proceeding initiated by the district if the proceeding is based in any part on the evaluation runs afoul of section 279.14(2) if it means that an employee subject to a termination hearing can grieve an evaluation report connected to the termination in a chapter 20 proceeding. Since that meaning is necessarily excluded by the express provisions of section 279.14(2), the proposed contract can only mean that the teacher has the right to object through proceedings under section 279.16 or under section 279.27. Therefore, the association's preservation of the employee's right to contest a negative evaluation in a grievance proceeding cannot establish a mandatory subject of bargaining under section 20.9. The board's ruling to the contrary is **REVERSED**.

Remediation

Section C of support personnel's proposed article XXIII and section D of the association's proposed article XVIII establish procedures by which the district must give the employee assistance to improve the quality of the employee's work and eliminate deficiencies noted in observations or evaluations if the employee requests such assistance or, in the association's proposal, automatically if any item in an evaluation form is marked "unsatisfactory." Support's personnel's proposal also provides that any negative comments, criticisms, complaints or unsatisfactory assessments about the employee not mentioned on the next assessment are deemed to have been corrected by the employee.

The board found these provisions to be mandatory subjects of bargaining and cited *Aplington* and its progeny without substantial comment.

These proposed items do not run afoul of section 279.14(2) because they do not tell the district what performance standards it must apply. Rather, they tell the district what services it must offer to employees whose performance is found unsatisfactory.

According to the district, the board has previously found that what administrators must do to correct deficiencies in a employee's performance after a negative performance evaluation is a permissive subject of bargaining. See *Burlington Comm. Sch. Dist.*, 93 PERB 4925. However, *Burlington* is not helpful to the district. The proposal at issue in that case was found not to be a proposal for "evaluation procedures" within the meaning of section 20.9, but rather to be a detailed blueprint for a comprehensive evaluation process.

Remediation is a necessary part of the evaluation procedure, see *Northeast Comm. Sch. Dist. v. Public Employment Relations Bd.*, 408 N.W.2d 46, 50-51 (Iowa 1987), albeit not a part which involves "performance standards."

The association's proposal defines assistance which must be given to the employee but does not define "performance standards." The board's ruling that the remediation provisions of section D in both proposals establish mandatory subjects of bargaining is therefore **AFFIRMED**.

Association Proposal 6

The association's proposed article VII deals with wages and salaries.

Section B(2) establishes credits to be given for outside teaching experience and military experience. The amount of credit given for experience determines an employee's placement on the salary schedule, and thus the employee's wages.

In *Charles City*, 291 N.W.2d 766 at 769, the Iowa Supreme Court said that the nature of credit hours to be earned in order to advance up a salary scale was not a mandatory subject of bargaining. However, in *Woodbine Comm. Sch. Dist. of Harrison v. Public Employee Relations Bd.*, 316 N.W.2d 862, 864 (Iowa 1982), the Court emphasized that its ruling in *Charles City* was limited to the specific nature or content of credit hours. In *Woodbine*, the Court found that the number of credit hours which would produce an advance on the salary scale was a mandatory subject of bargaining. Like the number of credit hours, the amount of credit to be given for previous experience is a quantitative consideration. Thus, the *Woodbine* analysis, not the *Charles City* analysis, applies to this proposal. The board's ruling that credit for prior experience is a mandatory subject of bargaining is therefore **AFFIRMED**.

Section D(1) provides that employees are to be paid on or before the 15th day of each month and to receive their checks on regular school days at the buildings where they regularly work. The first sentence of section D(3) gives an employee who resigns or retires the option of receiving all salary entitlements minus authorized deductions within 30 days after termination. The second sentence of section D(3) establishes options for employees who retire or are separated from the district and who are entitled to receive

additional compensation. Citing two PERB decisions but without further comment, the board ruled that section D(1) and the first sentence of section D(3) are mandatory under the section 20.9 category of "wages." The association argues in equally summary fashion that this ruling should be affirmed. The district argues persuasively that it should be reversed.

As used in section 20.9, "wages" means "a specific sum or price paid by an employer in return for services rendered by an employee." *Fort Dodge*, 319 N.W.2d at 183. As noted in detail above, our Supreme Court has repeatedly held that the "laundry list" of mandatory bargaining subjects set out in section 20.9 is to be construed narrowly, not expansively. See, *e.g.*, *Iowa City*, 554 N.W.2d at 710. The proposals in dispute here establish when and where paychecks will be distributed and when a resigning or retiring employee may collect the balance of salary payments due. They do not establish specific sums or prices to be paid by the employer in return for services to be rendered by the employee. Thus, they do not directly concern "wages" and do not identify mandatory subjects of bargaining. The board's decision to the contrary is therefore **REVERSED**.

The first sentence of section E(2)(a) requires that if a teacher teaches more than 300 minutes per day, the district must pay the teacher additional wages. The second and third sentences of section E(2)(a) require that secondary and intermediate teaching assignments be divided into five class periods per day and that "Additional teaching assignments shall be voluntary and compensated at the employer's hourly proportional per diem rate."

The board found that the first sentence (extra pay for more than 300 minutes per day) established a mandatory subject of bargaining and that the remainder of section E(2)(a) established permissive subjects of bargaining.

The district argues that a proposal requiring extra pay for teaching more than 300 minutes daily must be a permissive subject of bargaining because it interferes with the employer's right to assign work and attempts to negotiate the employee's work load. In *Sergeant Bluff-Luton Education Association,* 76 PERB 715 (1976) the board stated that a proposal which "speaks to wage rates" as they apply to work load is a mandatory subject of bargaining but one which "requires the preliminary negotiation of work load itself" is merely a permissive subject of bargaining.

The board and the association both cite *Iowa City Fire Fighters* in support of their respective positions.

The central thrust of the first sentence of section E(2)(a) is that it establishes the normal work day as 300 minutes and requires additional compensation for daily work which exceeds that limit. This proposal does not define the employee's work load. Rather, it defines the employee's normal work day and thus when an employee is entitled

to extra pay for working additional time. In common parlance and by the plain meaning of the words, extra pay for extra time worked is "overtime compensation." *Random House Webster's College Dictionary* (1992) defines "overtime" as "working time before or after one's regularly scheduled working hours" and also "pay for such time." The first sentence of section E(2)(a) therefore identifies a mandatory subject of bargaining, as the board correctly concluded.

Neither side challenges the board's finding that sentences two and three identify permissive subjects of bargaining.

The board's rulings with respect to section E(2)(a) are therefore **AFFIRMED**.

Association Proposal 9

The association's proposed article X deals with sick leave.

Section G provides that employees who use two or fewer days of sick leave during the school year are entitled to a personal day as defined in another section of the association's proposal. The board determined that this item is mandatory under the section 20.9 subject of "leaves of absence."

A "leave" is, among other things, "permission to be absent, as from work" and also "the time this permission lasts." *Random House Webster's College Dictionary* (1992).

In *City of Newton*, 94 PERB 5077, the board found that a proposal for cash incentive payments for unused sick leave was not mandatory as "wages" or "supplemental pay." However, the board's finding here is that this proposal is mandatory as affecting "leaves of absence," not "wages" or "supplemental pay." This proposal is more like the one in *Scott County*, 87 PERB 3418. In that case, the disputed proposal, like the one here, granted additional personal leave time to employees who did not use permitted sick leave. The board found that proposal to be mandatory as affecting "leaves of absence."

Neither side cites any controlling Iowa appellate authority. Absent that, the greater applicability of *Scott County*, as contrasted with *City of Newton*, compels the conclusion that section G identifies a mandatory subject of bargaining. The board's ruling to that effect is therefore **AFFIRMED**.

Section H contains a detailed proposal for a sick leave bank. The board ruled that this proposal establishes a mandatory subject of bargaining under "leaves of absence."

In evaluating a proposed subject of bargaining, the court must determine whether the subject is mandatory (the parties must bargain if either party proposes it); permissive (neither party can be required to bargain on it by the other party); or prohibited (the subject is excluded from bargaining by some other provision of law). *Charles City*, 291 N.W.2d at 769.

Code of Iowa section 279.40 requires public school districts to grant their employees sick leave in specified amounts. It contains no provision for employees to transfer their accumulated sick leave to other employees. The district argues that the absence of provisions in section 279.40 for transfer of sick leave makes such transfer an illegal subject of bargaining.

The arguments fails for several reasons.

First, section 279.40 should not be construed in isolation. Section 20.9 guarantees to employees the right to bargain about "leaves of absence" as a mandatory subject. Section 279.40 guarantees those employees a specific amount of sick leave without requiring them to bargain for it.

In general, statutes relating to the same subject or closely related subjects should be construed together so as to produce a result which is harmonious and consistent with the intention of the legislature. *McSorley*, 549 N.W.2d at 809.

If the two statutes were in conflict, then the specific sick leave provisions of section 279.40 would probably control over the more general provision that employees have a right to bargain concerning "leaves of absence." But in fact the statutes do not conflict. To the contrary, section 279.40 provides in part that "Nothing in this section shall be construed as limiting the right of a school board to grant more time than the days herein specified." Hence, the complete statutory scheme is that school boards must give their employees a certain amount of sick leave, they are permitted to bargain with their employees for additional amounts of sick leave, and both employers and employees have the right to compel each other to bargain about leaves of absence, including sick leave.

The sick leave bank proposal establishes employee entitlements to leaves of absence. It allows voluntarily participating employees to assist each other in order to be able to take longer leaves of absence in the event of extended illness. Section H therefore identifies a mandatory subject of bargaining. The decision of the board is **AFFIRMED**.

Association Proposal 11

The association's proposed article XIII establishes the "Employee Work Year." Section B provides for "Holidays," and section D provides for "Snow-day Makeup."

Section B(2) establishes that the Friday following Thanksgiving, at least six school days during the winter break, and at least five school days during the spring break will be "non-paid days." It further provides that the Friday before Easter Sunday will be an additional non-paid day if it does not fall during the spring break. Citing *Area IV Community College*, 76 PERB 663 and 674, and *Sergeant Bluff-Luton Community School District*, 76 PERB 715, the board ruled without comment that these provisions are mandatory under the section 20.9 headings of "Vacations" and "Holidays."

Section B(3) provides that the employee's work day will end 15 minutes after "the close of the pupil's day" on the last school day preceding the holidays established in section B(1) and the non-paid days established in section B(2) so long as the employee has completed all job duties by that time. Citing *Sergeant Bluff, supra*, and *Western Hills AEA XII*, 80 PERB 1659, the board ruled that section B(3) is mandatory under "hours."

The district's annual calendar apparently includes at least one in-service activity day (identified in the proposal as a "Professional Development Day") at the end of the school year. The association's proposed section D provides that if "snow-makeup days" are added at the end of the district's school year, and if this addition would cause the last in-service day to be on a Monday, the in-service day will be held on the preceding Saturday instead. Citing *Andrew Community School District*, 84 PERB 2629, the board ruled that this proposal is mandatory because it relates to the section 20.9 mandatory bargaining subject of "in-service training."

The district argues that all of these proposals are permissive because they infringe upon the district's exclusive management rights to assign and direct the work of its employees under section 20.7. The district cites *Fort Dodge Community School District*, 84 PERB 2650, in support of this general proposition but makes no other argument. The association argues that its proposed section B(2) clearly deals with "vacations" and "holidays," both mandatory subjects of bargaining under section 20.9. The court agrees.

The association's proposed section B(3) establishes a definition of the work day for the last school day before each holiday and each non-paid day. Hence, by its terms, this proposal defines work "hours" in the special context established by "vacations" and "holidays." This item therefore identifies a mandatory subject of bargaining.

The association argues that its proposed section D identifies a mandatory subject of bargaining because "Professional Development Day" is a synonym for "in-service day." As a former public school teacher, the undersigned is not entirely persuaded by this argument. The "Professional Development Day" or "in-service day" at the end of the school year is not ordinarily given over to the kinds of activities that would qualify as "in-service training." Rather, teachers typically use the day to complete required reports and complete the chores necessary to securing their classroom spaces and equipment before the summer break.

In the past, those year-end chores were expected of teachers but were not recognized in the academic calendar. It may be that "in-service training" has become a concept sufficiently inclusive to cover these year-end activities. In *Andrew Community School District, supra,* at 9-10, the board ruled that scheduling of in-service days is a mandatory subject under the head of "in-service training." Absent contrary authority, and giving appropriate deference to the board's expertise, the court agrees. The board's ruling with respect to association proposal 11 is therefore **AFFIRMED**.

Association Proposal 13

The association's proposed article XV deals with "Reduction in Staff." Proposed section E(2) provides that each laid-off employee may, at the employee's option, receive all remaining salary in one payment not later than July 10 if such payment is requested in writing before May 1. The board ruled that this provision concerning method and timing of salary payments is mandatory under "wages." For reasons set out in the discussion of association proposal 6 above, the court agrees.

The district cites *Mason City, supra,* in support of its argument that laid-off employees are no longer employees and thus cannot invoke the mandatory bargaining provisions of section 20.9. For reasons set out fully at pages 6 and 7 above, the court finds this argument unpersuasive.

The decision of the board with respect to association proposal 13 is therefore **AFFIRMED.**

Association Proposal 29

Association proposal 29 relates to three matters identified as "Side Agreements."

The association's proposed article XX defines "specific building and position." Proposed article XXI defines "similar position." Both terms appear in provisions of the collective bargaining agreement relating to transfer of personnel from one building to another and/or from one position to another. "Transfer procedures" are mandatory subjects of bargaining under section 20.9. The board has found that similar transfer provisions are mandatory as "transfer procedures." See *Area I Vocational Tech. School District*, 76 PERB 560.

The side agreement entitled "Special Education Teacher Agreement" establishes the salary schedule, sick leave, and seniority rights of teachers transferred into the district under the provisions for "joint employment and sharing" of special education personnel established by Code of Iowa section 280.15(2). Placement on the salary schedule establishes the salary of a teacher new to the district. Thus, all three of the subjects

covered in the special education teacher agreement (initial salary, sick leave, and seniority) are listed as mandatory subjects of bargaining in section 20.9.

All of the side agreements in association proposal 29 therefore identify mandatory subjects of bargaining. The board's ruling to the effect is affirmed.

DECISION AND ORDER

1. The rulings of the public employment relations board are variously affirmed and reversed as set out in detail above.

2. The clerk shall provide copies of this order to attorneys of record.

Dated February 26, 2001.

K. D. Briner, Judge

Copy hereof mailed or delivered to
Pltf/Pet Atty
Defn/Resp Atty